IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

HERBERT D. MCINTOSH	§	
VS.	§	CIVIL ACTION NO. 1:11-CV-550
M. MARTIN	§	

MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Petitioner, Herbert D. McIntosh, a federal prisoner currently confined at FCI Beaumont Low, proceeding *pro se*, filed this petition for writ of habeas corpus contesting the legality of his conviction.

The Court referred this matter to the Honorable Zack Hawthorn, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends this action be dismissed.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).
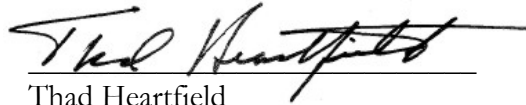
After careful consideration, the Court finds the objections lacking in merit. As the Magistrate Judge correctly concluded, petitioner has failed to meet his burden to show the inadequacy or ineffectiveness of a motion under Section 2255. To the extent petitioner now argues that 28 U.S.C. § 2255 violates the U.S. Constitution "Arising Under" clause of Article III and the Supremacy Clause, this claim must also be denied as without merit. None of the cases relied on by petitioner support this proposition. Petitioner's objections are overruled.

ORDER

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is

ADOPTED. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

   SIGNED this the 15 day of **December, 2011.**

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Thad Heartfield
United States District Judge